

# ANALYSIS OF ORIGINAL BILL

## Franchise Tax Board

Author: Knox Analyst: Colin Stevens Bill Number: AB 385  
Related Bills: AB 701, AB 1063  
(1997/1998) Telephone: 845-3036 Introduced Date: 2/11/1999  
Attorney: Doug Bramhall Sponsor: \_\_\_\_\_

**SUBJECT:** FTB Disclosure of Tax Information to Charter Cities if Written Agreement Exists

### SUMMARY

Under the Administration of Franchise and Income Taxes (AFITL), this bill would permit the Franchise Tax Board (FTB) to disclose California income tax information to tax officials of charter cities in California. Disclosure would be under a written agreement and would be limited to (1) information essential for tax administration purposes, (2) information regarding only taxpayers with a business or residence-based business located within the charter city, and (3) a taxpayer's name, address, social security or taxpayer identification number, and business activity code. Use of the information would be limited to employees of the taxing authority of a charter city.

The charter city first would be required to certify to the FTB that taxpayers in the business activity codes for which information is requested are subject to tax under the city's ordinance. However, disclosure of information on individuals self-identified as engaging in business activity code 6883 (authors and artists) would not be allowed if certain conditions are met.

### EFFECTIVE DATE

This bill would be effective January 1, 2000.

### LEGISLATIVE HISTORY

AB 1063 (1998), AB 701 (1997), AB 1881 (Stats. 1993, Ch. 891), SB 1255 (91/92).

### BACKGROUND

In 1995, the City of Los Angeles, as part of a business tax amnesty program, contacted the Franchise Tax Board (FTB) to gain information on unlicensed businesses operating in the city and filing state taxes, but failing to pay appropriate city taxes. Because of confidentiality restrictions discussed in specific findings, the FTB was unable to provide information to the city. However, the FTB was able to receive information from the city, identify businesses paying state but not city tax, and notify those businesses of the city's amnesty program. The FTB provided no taxpayer information to the city as such action was not authorized under state law.

Currently, any local government requesting tax information is required to send an affidavit to both the FTB and taxpayer to request information.

### Board Position:

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_____ N	_____ OUA	_____ X PENDING

### Department Director

### Date

**Gerald Goldberg**

**4/1/1999**

Local governments do not know the identity of taxpayers operating unlicensed businesses and, consequently, do not have the information necessary to provide such an affidavit. Absent this affidavit, information cannot be provided.

#### SPECIFIC FINDINGS

**Current federal law** provides rules for the disclosure of federal tax information. Federal law provides that returns and tax information are confidential and may not be disclosed to federal or state agencies or employees except for authorized purposes. Agencies allowed access to federal return information include certain federal agencies and state agencies, such as the FTB. A return is defined as any tax return, information return, declaration of estimated tax, or claim for refund under the Internal Revenue Code. Where an unauthorized disclosure has occurred, taxpayers whose privacy has been invaded may bring a civil suit for damages and may recover the greater of \$1,000 or the amount of the actual damages sustained as a result of the disclosure. Punitive damages also may be recovered if the disclosure was willful or grossly negligent.

**Current state law** prohibits the disclosure of any taxpayer information except as specifically authorized by statute. Any FTB employee or member responsible for release of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony.

**California law**, in limited instances, permits the FTB to release individual tax return information to the following: legislative committees, the Attorney General, the California Parent Locator Service, the directors of Social Services and Health Services, California tax officials, such as the Board of Equalization or the Employment Development Department, the Controller, and the Department of Motor Vehicles. Agencies must have a specific reason for requesting the information, including tax investigation, verifying eligibility for public assistance, locating absent parents to collect child support, or locating abducted children. For some agencies, only limited information may be released, such as the taxpayer's social security number and address.

Similar statutory provisions exist to protect the confidentiality of tax information collected by the BOE and EDD.

**California law** permits the FTB to release tax information according to tax return sharing agreements with the Internal Revenue Service (IRS), the Multistate Tax Commission (MTC), and taxing authorities of other states. The exchange must relate to the enforcement of tax laws and the information must not be made public.

**Current state law** provides that the FTB may respond to requests from local taxing agencies to furnish information on a taxpayer. The request must be in the form of an affidavit signed under the penalty of perjury stating that the purpose of the request relates to an investigation of the tax specified in the request and that the information will be used in the ordinary performance of the applicant's duties.

**Current state law** requires each city which maintains a computerized record-keeping system or has access to such a system and which assesses a business tax to annually furnish to the FTB a list of all businesses subject to tax in the preceding year. This list must include:

- business name,
- address,
- federal employer identification number,
- type of business activity,
- amount of annual business tax, and
- any other information as the FTB may require.

California has two kinds of cities: charter cities and general law cities. A charter city is one that receives its powers from the state Constitution. Charter cities may make their own ordinances and regulations, provided those do not conflict with state law. With some exceptions, general law cities may use only those powers that are specifically enumerated by the state. However, general law cities may levy any tax that may be levied by any charter city. According to the League of California Cities, as of January 1999, California has 473 incorporated cities of which 99 are charter cities.

**AB 385** would allow the FTB to enter into an agreement for the exchange of confidential tax information with a charter city, thereby allowing the FTB to provide tax information to charter cities without the use of an affidavit. The tax information that could be provided would be limited to (1) information essential for tax administration purposes, (2) information regarding only taxpayers with a business or residence located within the jurisdiction of the charter city, and (3) a taxpayer's name, address, social security or taxpayer identification number, and business activity code. Use of the information would be limited to employees of the taxing authority of a charter city.

The FTB could provide information only after certification by the charter city that taxpayers in the business activity codes for which information is requested are subject to tax under the city's ordinance.

However, the FTB would be prohibited from disclosing information on individuals self-identified as engaging in federal principal business activity code 6883 (authors and artists), unless the department first sends written notice to the taxpayer stating that information will be provided to the charter city unless the taxpayer certifies within 90 days that he or she is a writer, musician, director or other creative artist. If the taxpayer submits a certification, the FTB could not send information about the taxpayer to the city. However, if a business address reported on his or her tax return is different from the taxpayer's home address, the FTB could provide information to a charter city without notifying the taxpayer and obtaining certification from the taxpayer.

This bill would define "director," "musician," "writer," and "other creative artist."

### Policy Considerations

California's voluntary compliance tax system relies on taxpayers accurately reporting their income. If taxpayers perceive that tax information is being shared or compromised, the voluntary compliance system may be jeopardized.

This bill would allow the FTB to furnish to charter cities information similar to that which cities currently provide to the FTB.

Taxpayers self-identified in activity code 6883 would be sent a written questionnaire to determine if they meet the exclusion requirements of the bill. If exclusion requirements are met, FTB would not forward the individual taxpayer information to the requesting city. However, this would be a reoccurring annual task that could be perceived as invasive to those taxpayers contacted.

### Implementation Considerations

Department staff has identified the following implementation considerations and is available to assist the author's office staff with these and any other considerations that may arise.

Beginning with the 1998 year, federal and state tax forms contain six-digit activity codes based on the North American Industry Classification System. Therefore, business activity code 6883 would not be used on tax forms, and taxpayers could not identify themselves as engaging in that line of business.

Providing tax return information to charter cities would require that the department process requests for information from cities, including requests from taxpayers identified as activity code 6883. These requests are expected to result in costs as described below.

### Technical Considerations

Paragraph (1) of subdivision (d) limits the information that may be provided to a charter city under written agreement, but could also be read to limit the information that can be provided to a charter city under affidavit per subdivision (b), which currently is not limited. If the author does not intend to limit the information that can be provided under affidavit, he may wish to amend this paragraph to specify that tax information provided to a charter city would be limited when provided under a written agreement.

The first sentence in paragraph (2) of subdivision (d) would not allow the FTB to provide information to a charter city for individuals identified as being in activity code 6883 unless the taxpayer certifies to the FTB that he or she is a writer, musician, or other creative artist. According to discussions with the author's staff, the bill is intended to allow the FTB to release information on those taxpayers if they do not certify that they are a writer, musician, or other creative artist. Amendment 1 would allow the FTB to provide information if the taxpayer does not provide the required certification.

FISCAL IMPACT

Departmental Costs

The FTB typically is reimbursed for costs incurred to provide information to another taxing authority. Based on an assumed 100 requests for service over a three-year period, the costs to establish and process requests would be approximately \$153,000 per year. Costs could be higher or lower, depending upon the number of requests actually received. This estimate does not take into account the cost for processing the records of taxpayers identified as being in activity code 6883.

If cities request information for taxpayers engaged in activity code 6883, the department would incur costs in addition to those stated above. The following additional costs are based on approximately 21,000 taxpayers that filed as engaging in activity code 6883 in the last year for which data are available. The costs of this program are estimated to be \$41,000 in the first year and \$36,000 each year thereafter to construct and maintain a database and contact taxpayers identified as being in activity code 6883. An additional \$42,000 would be required annually for postage.

Tax Revenue Estimate

This bill would have no identifiable revenue effect on state income tax receipts.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 385  
As Introduced February 11, 1999

AMENDMENT 1

On page 3, line 22, strike "certifies" and insert:

does not certify